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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,873	11/20/2003	Daniel J. Falla	60665B	9382
109	7590	06/16/2005	EXAMINER	
THE DOW CHEMICAL COMPANY INTELLECTUAL PROPERTY SECTION P. O. BOX 1967 MIDLAND, MI 48641-1967			KRUER, KEVIN R .	
			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,873

Applicant(s)

FALLA ET AL.

Examiner

Kevin R Kruer

Art Unit

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/20/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 11/23/2003 has been fully considered. An initialed copy of said 1449 is enclosed herein. The references cited on the PTO-892 supplied by applicant (from parent application 09/950,345) have been included on the enclosed PTO-892.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 depends from claim 24. The application does not contain a claim 24.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-8, 10, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 1087801 (herein referred to as Sheller) in view of Burns (US 5,710,184).

Sheller teaches a cork gasket having improved coating (page 1, lines 10+). The coating lowers vapor transmission rate of the sealed fluid (page 1, line 25). The cork is coated with an emulsion of an acrylic-modified vinylidene chloride copolymer (page 1, lines 47+). One such polymer is Rhoplex R-9 (page 2, line 4), which is herein understood to read in the polymer of claim 6. The coating may further comprise a plasticizer, herein relied upon to read on the claimed thixotropic agent, in amounts of 1-10 wt% (page 2, lines 30+). Said coating is applied to the entire outer surface (page 1, lines 75+) of a cork (page 1, line 48+). The coating is applied by immersing or spray coating the cork, and drying the cork by heating in an oven (page 1, lines 85+).

With regard to the method limitations of claims 1, 7, 8, and 10 and the solvent of claims 11 and 13, the examiner takes the position that said limitations are method limitations. The courts have held that a method of making a product does not patentably distinguish a claimed product from a product taught in the prior art unless it can be shown that the method of making the product inherently results in a materially different product. In the present application, no such showing has been made. The solvent is understood to be a method limitation because it is evaporated away in the final product.

Sheller does not teach that the cork should comprise synthetic cork. However, Burns teaches that natural cork suffers with respect to color, drying, shrinkage, crumbling, sticking and cost (col 1, lines 30+). Burns teaches a molded closure comprising a thermoplastic elastomer and a blowing agent that may be used in place of cork (abstract). Thus, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to utilize the synthetic cork taught in Burns in place of the cork taught in Sheller. The motivation for doing so is that the synthetic cork has improved characteristics with regard to color, dimensional stability, crumbling, and cost.

6. Claims 2 and 9 are rejected under 35 USC 103(a) as being obvious over GB 1087801 (herein referred to as Sheller) in view of Burns (US 5,710,184), as applied to claims 1, 3-8, 10, 11 and 13, and further in view of WO96/28378 (herein referred to as Dewar).

Sheller in view of Burns is relied upon as above, but does not teach that only one surface of the cork should be coated. However, Dewar teaches a coated cork wherein the coating is applied only to a single face (page 3, lines 1+). Thus, it would have been obvious to only coat a single face of the cork taught by Sheller. The motivation for doing so would have been to reduce cost.

7. Claim 12 is rejected under 35 USC 103(a) as being obvious over GB 1087801 (herein referred to as Sheller) in view of Burns (US 5,710,184), as applied to claims 1, 3-8, 10, 11 and 13, and further in view of Murphy et al (US 4,320,047).

With regard to claim 12, Sheller teaches that the coating may comprise a thixotropic agent, but does not explicitly teach the addition of silica to said coating. However, Murphy teaches that silica is a known thixotropic agent (col 1, lines 1+). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the thixotropic agents taught in Murphy as the thixotropic agent taught in Sheller. The motivation for doing so is that silica is a known thixotropic agents.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin R Kruer whose telephone number is 571-272-1510. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin R. Kruer
Patent Examiner-Art Unit 1773